

FEDERAL ELECTION COMMISSION

FIRST GENERAL COUNSEL'S REPORT

MUR: 7417

DATE COMPLAINT FILED: June 21, 2018

DATE OF NOTIFICATION: June 27, 2018

LAST RESPONSE RECEIVED: Aug. 3, 2018

DATE ACTIVATED: Sept. 11, 2018

**EXPIRATION OF SOL: Jan. 2022 (earliest)/
ongoing (latest)**

ELECTION CYCLE: 2018

COMPLAINANT:

Dennis Olson

RESPONDENTS:

Indivisible Washington's 8th District
Dr. Kim Schrier for Congress and Philip Lloyd
in his official capacity as treasurer
Jason Rittreiser for Congress and Jay Petterson
in his official capacity as treasurer
Dr. Shannon for Congress and Janica Kyriacopoulos
in her official capacity as treasurer

**RELEVANT STATUTES
AND REGULATIONS:**

52 U.S.C. § 30101(4)(A), (17)
52 U.S.C. § 30102
52 U.S.C. § 30103
52 U.S.C. § 30104(a), (b)
52 U.S.C. § 30120
11 C.F.R. § 100.5
11 C.F.R. § 100.22
11 C.F.R. § 100.26
11 C.F.R. § 100.74
11 C.F.R. § 100.76
11 C.F.R. § 100.77
11 C.F.R. § 100.94
11 C.F.R. § 100.155
11 C.F.R. § 110.11(a)(1)

INTERNAL REPORTS CHECKED:

Disclosure Reports

FEDERAL AGENCIES CHECKED:

None

I. INTRODUCTION

The Complaint alleges that Indivisible Washington's 8th District ("WA8"), a self-styled "grassroots" organization formed in 2017, failed to register and report as a political committee in violation of the Federal Election Campaign Act of 1971, as amended, (the "Act").¹ The Complaint asserts that WA8 became a political committee by raising or spending over \$1,000 for the purpose of electing a Democrat to Congress from Washington 8th Congressional District, including sponsoring a candidate forum that benefited three Democratic candidate committees: Dr. Kim Schrier for Congress, Jason Reittereiser for Congress, and Dr. Shannon for Congress.² Because of WA8's purported political committee status, the Complaint also argues that WA8's website failed to include a disclaimer.³ Finally, the Complaint contends that WA8 coordinated with the Washington State Democratic Party ("WSDP") to help elect Democratic candidates.⁴ WA8 denies it violated the Act.⁵ The Schrier and Rittereiser Committees deny they received an in-kind contribution as a result of their participation in the candidate forum.⁶

As further discussed below, it appears unlikely that the expenses associated with the activities referenced in the complaint crossed the \$1,000 statutory threshold for political committee status. Accordingly, we recommend that the Commission dismiss, as a matter of prosecutorial discretion, the allegations that WA8 failed to register and report as a political

¹ Compl. at 27 (June 21, 2018).

² *Id.* at 12-14.

³ *Id.* at 8.

⁴ *Id.* at 27.

⁵ WA8 Resp. at 1 (July 23, 2018).

⁶ Schrier Committee Resp. at 2 (Aug. 3, 2018); Rittereiser Committee Resp. at 5 (July 30, 2018). Dr. Shannon for Congress did not respond to the Complaint.

1 committee in violation of 52 U.S.C. §§ 30102, 30103, 30104(a); and that it made unreported
2 in-kind contributions in violation of 52 U.S.C. § 30104(b).⁷ We also recommend that the
3 Commission dismiss, as a matter of prosecutorial discretion, the allegations that WA8 failed to
4 report in-kind contributions to the Schrier, Rittereiser, and Hader committees, and that these
5 committees failed to report in-kind contributions from WA8 in violation of 52 U.S.C.
6 § 30104(b).⁸ Finally, we recommend the Commission dismiss, as a matter of prosecutorial
7 discretion, the disclaimer allegations against WA8.⁹

8 II. FACTUAL AND LEGAL ANALYSIS

9 A. The Commission Should Dismiss the Allegations that WA8 Failed to Register 10 and Report as a Political Committee and that it Made Unreported In-Kind 11 Contributions

12 WA8 states that it is “a grassroots group of individuals committed to progressive values”
13 and “an offshoot of the national Indivisible grassroots movement.”¹⁰ According to its website,
14 WA8 was founded as a “Facebook group” in January 2017 and is “focused on Washington
15 State’s Eighth Congressional District.”¹¹
16

⁷ See *Heckler v. Cheney*, 470 U.S. 821 (1985).

⁸ *Id.*

⁹ *Id.*

¹⁰ WA8 Resp. at 1. The Indivisible movement’s website states: “Indivisible.org is a joint website of Indivisible Project and Indivisible Action. Indivisible Project and Indivisible Action are separate organizations. Indivisible Project is a registered 501(c)(4). Its mission is to cultivate and lift up a grassroots movement of local groups to defeat the Trump agenda, elect progressive leaders, and realize bold progressive policies. Indivisible Action is a Hybrid Political Action Committee fueled by the grassroots movement to win elections and build local, independent progressive power nationwide.” Indivisible; <https://indivisible.org/> (last visited Nov. 14, 2018).

¹¹ See Indivisible Wash.’s 8th Dist., <http://www.indivisible-wa8.com/> (last visited Nov. 14, 2018); see also, Compl. at 2 (excerpt from FAQs on WA8’s Facebook page stating “we are working to flip our congressional seat ‘from red to blue,’”); *id.* at 4; (copies of posts from Chris Petzold, WA8’s founder, endorsing candidates Kim Schrier and Jason Rittereiser for the Eighth Congressional District primary); *id.* at 4, 5 (copies of posts criticizing the Republican Party and 8th District Republican candidate Dino Rossi, and photos of individuals holding anti-Rossi posters).

1 According to the Complaint, posts on WA8's social media pages reflect that the
2 organization raised and spent funds to influence a federal election. Regarding WA8's spending,
3 the Complaint highlights the organization's website, which included language such as: "control
4 of the House in 2018 will be decided by a small number of Swing Districts," and "[j]oin your
5 closest Swing District team to hear about things you can do to support Democrats — and defeat
6 Republicans — in that district, no matter where you live," and to "stop Trump and the GOP
7 agenda by working together."¹² The Complaint further alleges that Chris Petzold, purportedly
8 WA8's founder, sent out tweets announcing the organization's endorsement of Democratic
9 candidates Jason Rittereriser and Kim Schrier,¹³ and its opposition to Republican candidate Dino
10 Rossi, stating "Working to ensure @DinoRossiWA loses in WA. . . again!"¹⁴ In support of a
11 student-led "March for Our Lives" demonstration, the Complaint alleges WA8 spent money to
12 print tags that attacked Rossi and stated "Flipthe8th."¹⁵ The Complaint also points to WA8's
13 official logo,¹⁶ banner,¹⁷ sales of WA8 merchandise,¹⁸ food brought to WA8 events,¹⁹ and its
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¹² Indivisible Wash.'s 8th Dist., Resources, <https://www.indivisible-wa8.com/resources/>, (last visited Nov. 14, 2018).

¹³ Compl. at 4.

¹⁴ *Id.* at 5.

¹⁵ *Id.* at 26.

¹⁶ *Id.* at 6.

¹⁷ *Id.* at 7.

¹⁸ *Id.* at 17.

¹⁹ *Id.* at 15-23.

1 Post Office Box²⁰ as further evidence of the organization's spending.²¹

2 The Complaint also alleges that on March 18, 2018, WA8 hosted a candidate forum that
3 featured three Democratic primary candidates, Schrier, Rittereiser, and Hader.²² WA8 solicited
4 \$3 donations to defray the cost of the event, which was held at a church in Sammamish,
5 Washington,²³ and promised that any amount left over would be donated to a food and clothing
6 bank.²⁴

7 Finally, the Complaint alleges that WA8 and WSDP may have coordinated their efforts to
8 help elect Democratic candidates, and WA8's coordinated spending is further evidence that it is a
9 political committee.²⁵ The Complaint attaches a copy of what appears to be a document posted
10 to WA8's Facebook page that lists the WSPD as one of the "organizations with whom we [WA8]
11 are tightly coordinated."²⁶ Also, in a blog apparently posted in March 2018, the Chair of the
12 WSDP, Tina Podlodowski, describes how she had not yet identified a particular candidate to

²⁰ *Id.* at 9.

²¹ *Id.* at 8-10.

²² *Id.* at 12-14. The primary for Washington's Eighth Congressional District was held on August 7, 2018. According to WA8, candidates who met a minimum threshold established by a committee of independent grassroots organizations in the district were invited to multiple candidate forums held throughout the district. WA8 Resp. at 1-2. WA8 asserts that the forums were hosted by various coalition groups, independent of party and candidate involvement, to give coalition members the opportunity to hear from various candidates to make an informed decision on coalition endorsement. *Id.*

²³ Compl. at 12-13.

²⁴ *Id.* at 14.

²⁵ *Id.* at 2, 24.

²⁶ *Id.* at 2.

1 which donors should contribute but advises them to “invest in organizations like the State Party,
2 the local legislative district organizations, or groups like Indivisible.”²⁷

3 WA8 responds that none of the alleged spending and fundraising associated with its
4 activities triggered any reporting obligations with the Commission. WA8 asserts that it is an
5 independent grassroots organization run by volunteers, and it was established long before the
6 Eighth Congressional District race.²⁸ WA8 states that funds raised through merchandise sales
7 are for administrative purposes, and funds collected at the candidate forum were for event costs,
8 not to raise money for candidates. WA8 denies that it coordinates with any party or candidate
9 or solicits contributions for itself or candidates. The Rittereiser and Schrier committees state that
10 no fundraising by or on behalf of candidates took place at this event.²⁹

11 The Act and Commission regulations define a “political committee” as “any committee,
12 club, association, or other group of persons which receives contributions aggregating in excess of
13 \$1,000 during a calendar year or which makes expenditures aggregating in excess of \$1,000
14 during a calendar year.”³⁰ In *Buckley v. Valeo*,³¹ the Supreme Court held that defining political
15 committee status “only in terms of the annual amount of ‘contributions’ and ‘expenditures’”
16 might be overbroad, reaching “groups engaged purely in issue discussion.”³² To cure that
17 infirmity, the Court concluded that the term “political committee” “need only encompass

²⁷ *Id.* at 24.

²⁸ WA8 Resp. at 1, 3, and 5.

²⁹ *Id.* at 4; Rittereiser Resp. at 3, 4; Schrier Resp. at 1.

³⁰ 52 U.S.C. § 30101(4)(A); 11 C.F.R. § 100.5(a).

³¹ 424 U.S. 1 (1976).

³² *Id.* at 79.

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1 organizations that are under the control of a candidate or the major purpose of which is the
2 nomination or election of a candidate.”³³ Accordingly, under the statute as thus construed, an
3 organization that is not controlled by a candidate must register as a political committee only if
4 (1) it crosses the \$1,000 threshold and (2) it has as its “major purpose” the nomination or election
5 of federal candidates. Once an organization becomes a political committee, it must report its
6 receipts and disbursements as set forth in 52 U.S.C. § 30104.

7 Expenditures made by “any person other than a candidate or candidate’s authorized
8 committee) in cooperation, consultation, or concert, with, or at the request or suggestion of, a
9 national, State, or local committee of a political party, shall be considered to be contributions
10 made to such party committee.”³⁴ Any expenditure that is coordinated but that is not made for a
11 coordinated communication under 11 C.F.R. § 109.21 or a party coordinated communication
12 under 11 C.F.R. § 109.37, is either an in-kind contribution to, or a coordinated party expenditure
13 with respect to, the candidate or political party committee with whom or with which it was
14 coordinated and must be reported as an expenditure made by that candidate or political party
15 committee, unless otherwise exempted under 11 C.F.R. part 100.³⁵

16 The available information fails to give rise to a reasonable inference that WA8 received
17 contributions or made expenditures exceeding the \$1,000 statutory threshold. With respect to
18 contributions, WA8 states it does not solicit them.³⁶ Further, the amounts generated by WA8’s

³³ *Id.*

³⁴ 52 U.S.C. § 30116(a)(7)(B)(ii).

³⁵ 11 C.F.R. § 109.20(b).

³⁶ Compl. at 4.

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1 activities — \$3 attendance fees and merchandise sales — were likely modest.³⁷ Similarly, the
2 value of any food items provided to WA8 appears small.³⁸ Finally, WA8's activities appear to
3 have been largely conducted by volunteers, and to the extent WA8 received free services from
4 volunteers, including the design of its logo and the creation and maintenance of its website, such
5 conduct would be exempt from the Act's definition of "contribution."³⁹

6 Regarding WA8's spending, the costs associated with the candidate forum were likely
7 small given that the event was held at a community church, WA8 only sought \$3 donations from
8 attendees to cover the costs, and ultimately donated \$150 to a food bank from the amounts
9 collected. Also, according to WA8 and the Rittreiser and Schrier committees, no fundraising by
10 or on behalf of candidates took place at this event.⁴⁰ As to Petzold's tweets supporting and
11 attacking candidates, it appears there was little cost associated with them.⁴¹ Finally, the available
12 information suggests that the group's other known expenses — a website, a post office box, and
13 the tags for March for Our Lives were *de minimis*.

³⁷ The merchandise included, among other things, T-shirts, water bottles, and mugs. *Id.* at 15-18.

³⁸ *Id.* at 21.

³⁹ Uncompensated personal services provided by volunteers are not contributions. *See* 52 U.S.C. § 30101(8)(B)(i) (exempting from the definition of contribution, "the value of services provided without compensation by any individual who volunteers on behalf of a candidate or political committee"). Further, uncompensated personal services related to internet activity *e.g.*, blogging, creating, hosting, or maintaining a website, by an individual or group, acting independently of or in coordination with any candidate, authorized committee or political party committee, are not contributions or expenditures. *See* 11 C.F.R. §§ 100.94, 100.155.

⁴⁰ WA8 Resp. at 4, Rittreiser Resp. at 3, 4, Schrier Resp. at 1. Rittreiser for Congress argues that the "church room" exception to the definition of contribution applies at 11 C.F.R. § 100.76, but that exception applies when an "individual" volunteers personal services to a candidate or political committee of a political party. *See* Factual and Legal Analysis at 6-7, MUR 5739 (Darcy Burner for Congress) (finding that individual's payments for rental of community facility with personal funds was not a contribution). Here, the allegations concern payments made by WA8, an organization, and not an individual using his or her personal funds.

⁴¹ *See* Compl. at 4-5.

1 Finally, while the statements on WA8's and WSDP's websites raise questions as to the
2 relationship between the two organizations, the Complaint fails to identify a particular
3 expenditure that may have been coordinated. Further, WA8 denies that it coordinated with any
4 other group, and we have no information regarding any specific payments made by either WA8
5 or the State Party that could result in the making of an in-kind contribution.⁴²

6 In sum, the available information is insufficient to support a reasonable inference that
7 WA8 met the statutory definition of political committee, and thus, we recommend that the
8 Commission exercise its prosecutorial discretion and dismiss the allegations that WA8 failed to
9 register and report as a political committee in violation of 52 U.S.C. §§ 30102, 30103, or 30104;
10 or made unreported in-kind contributions in violation of 52 U.S.C. § 30104(b).⁴³ Further, based
11 on the likely small amounts at issue, we recommend that the Commission dismiss as a matter of
12 prosecutorial discretion the allegation that WA8 made, and Dr. Kim Schrier for Congress, Jason
13 Ritterer for Congress, and Dr. Shannon for Congress received, unreported in-kind
14 contributions in violation of 52 U.S.C. § 30104(b) related to the candidate forum.⁴⁴

15 **B. The Commission Should Dismiss the Disclaimer Allegations**

16 The Act requires that all public communications by any person that expressly advocate
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⁴² See *Statement of Policy Regarding Commission Action in Matters at the Initial Stage in the Enforcement Process*, 72 Fed. Reg. 12545, 12546 (Mar. 16, 2007) (Commission will dismiss matter when matter does not merit further use of Commission resources, due to factors such as vagueness or weakness of evidence).

⁴³ *Heckler* 470 U.S. at 831. See also MUR 6205 (Fort Bend Democrats) (EPS case dismissing political committee status allegation where \$1,000 expenditure threshold may have been exceeded by a very small amount).

⁴⁴ *Heckler*, 470 U.S. at 831.

1 the election or defeat of a clearly identified federal candidate must contain a disclaimer.⁴⁵ Public
2 communications include general political advertising but not communications over the internet,
3 except for communications placed for a fee on another person's Web site.⁴⁶ All websites of
4 political committees require a disclaimer.⁴⁷

5 Even if WA8's social media posts contain express advocacy, they would not require
6 disclaimers because they do not appear to be public communications, given that they were not
7 placed for a fee on another person's website.⁴⁸ As to WA8's website, we recommend the
8 Commission exercise its prosecutorial discretion and dismiss this allegations, consistent with the
9 dismissal of the political committee status allegations. (*See* previous section.) Finally, as to the
10 "\$2.65" tags, WA8 spent only \$5.60 on them, and based on the *de minimis* amount at issue, we
11 recommend the Commission dismiss the disclaimer allegations as a matter of prosecutorial
12 discretion.⁴⁹

13 14 II. RECOMMENDATIONS

- 15 1. Dismiss the allegations that Indivisible Washington's 8th District violated 52 U.S.C.
16 §§ 30102, 30103, 30104;
- 17 2. Dismiss the allegation that Indivisible Washington's 8th District's violated 52 U.S.C.
18 § 30120;
- 19 3. Dismiss the allegations that Indivisible Washington's 8th District violated 52 U.S.C.
20 § 30104(b) by failing to report the making of in-kind contributions;

⁴⁵ See 52 U.S.C. § 30120(d); 11 C.F.R. § 110.11(a) (disclaimers required for public communications financed by any person that expressly advocates the election or defeat of a clearly identified candidate).

⁴⁷ 11 C.F.R. § 110.11(a)(1).

⁴⁸ *Id.* § 100.26

⁴⁹ See *Heckler*, 470 U.S. at 831.

4. Dismiss the allegation that Dr. Kim Schrier for Congress and Philip Lloyd in his official capacity as treasurer violated 52 U.S.C. § 30104(b);
5. Dismiss the allegation that Jason Ritterer for Congress and Jay Petterson in his official capacity as treasurer violated 52 U.S.C. § 30104(b);
6. Dismiss the allegation that Dr. Shannon for Congress and Janica Kyriacopoulos in her official capacity as treasurer violated 52 U.S.C. § 30104(b);
7. Approve the attached Factual and Legal Analysis;
8. Approve the appropriate letters; and
9. Close the file as to all Respondents.

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2/15/19
Date

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